THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 3639 of 1998

Date: 06-10-2005

Between:

The Mission High School, Rep., by its Correspondent

..... Petitioner

AND

The State of A.P., Rep., by its Secretary, Education Department, Secretariat Buildings and others

….Respondents

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 3639 of 1998

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O R D E R:

Proceedings in Rc. No. 267/A2/97, dated 8.1.1998 issued by the 2nd respondent is challenged in this writ petition as illegal, arbitrary and without jurisdiction.

Facts, to the extent necessary for this writ petition, are that the petitioner-school was established and admitted to grant-in-aid by the Government. The 4th respondent was working earlier as a Secondary Grade Teacher in the petitioner-school for about 27 years, teaching Science and English subjects for sixth and seventh classes. His abnormal behaviour of shouting loudly without addressing anybody is said to have created fear among the staff and students and on being interviewed on 1.9.1989, it was found that his behaviour was due to reasons of his ill-health. Accordingly, the 4th respondent was advised in writing on 2.9.1989 to proceed on medical leave. Since the 4th respondent refused to do so, he was placed under suspension, pending enquiry, vide proceedings dated 5.9.1989 and a copy thereof was marked to the 3rd respondent. Despite his suspension, the 4th respondent is said to have continued his visits to the school. The Correspondent of the petitioner-School, vide letter dated 6.9.1989, informed the District Educational Officer regarding the suspension pending enquiry of the 4th respondent. A Charge memo was issued to the 4th respondent on 27.9.1989 calling upon him to submit his explanation as to why disciplinary action should not be initiated against him for the charges alleged. Since the explanation dated 4.10.1989, submitted by the 4th respondent, was not found to be satisfactory, an Enquiry Officer was appointed. The Enquiry Officer

submitted his report on 5.12.1989 holding about ten charges as proved. Charges 3,4,5,7,8 and 9 were held to be totally proved, charges 1 and 2 as partly proved and charges 6 and 10 as not proved. The petitioner herein, vide Proceedings dated 18.12.1989, while enclosing a copy of the enquiry report called upon the 4th respondent to submit his explanation within 15 days. In his letter dated 27.12.1989, the 4th respondent pleaded pardon for the wrongs or short-comings, if any, and requested that he should not be removed from service. Punishment of stoppage of one increment for one year, from 1.8.1990 to 31.7.1991 with cumulative effect, was imposed vide proceedings dated 28.2.1990, a copy of which was also marked to the District Educational Officer (the 3rd respondent herein). The 4th respondent is said to have addressed a separate letter on 1.3.1990 informing the 3rd respondent regarding the punishment imposed on him. The 3rd respondent, vide proceedings dated 1.8.1995, informed the petitioner to take immediate action with reference to the representation submitted by the 4th respondent. The representation of the 4th respondent, enclosed to the said letter dated 1.8.1995, contained a request to the 3rd respondent to settle certain old issues like Family Planning Increment and others including suspension period and stoppage of increment. Petitioner would contend that though the proceedings dated 1.8.1995 issued by the District Educational Officer was not an order in any appeal, they had sent detailed replies on 7.8.1995 and 14.8.1995 to the 3rd respondent. The 3rd respondent vide proceedings dated 15.12.1995, requested the petitioner to furnish information which was sent by the petitioner, vide letters dated 2.1.1996 and 12.6.1996.

The 4th respondent filed W.P. No. 28683 of 1996 seeking directions from this Court to implement the order of the 3rd respondent dated 1.8.1995. The writ petition was dismissed by this Court, by order dated 17.4.1997, holding that the order of the 3rd respondent dated 1.8.1995 was not an order passed in any appeal preferred by the 4th respondent against the order of punishment imposed by the petitioner, that the petitioner school in which the 4th respondent was working was a High School which fell under the category of “Secondary Schools” as defined in Rule 3 of the A.P. Educational Institutions Employees Disciplinary Control Rules, 1983 and that against an order imposing punishment against an employee of such a school, an appeal was provided only to the Regional Joint Director of School Education. While holding that the District Educational Officer was not the competent authority to pass

any order, which would have the effect of nullifying the order of punishment passed by the petitioner-School against the 4th respondent, this Court held that the relief sought for by the 4th respondent for implementation of the directions given by the District Educational Officer, in proceedings dated 1.8.1995, could not be granted and accordingly dismissed the writ petition. It is not in dispute that this order has attained finality.

While so, the petitioner is said to have received proceedings dated 8.1.1998, from the 2nd respondent, purporting to be an order passed in an appeal filed by the 4th respondent. The proceedings dated 8.1.1998 of the 2nd respondent makes a reference to the order of this Court in Writ Petition No. 28683 of 1996. The petitioner is said to have sent a detailed reply to the 2nd respondent, vide letter dated 22.12.1997, wherein it was specifically stated that this Court had dismissed the writ petition on the same issue. Petitioner would contend that despite the reply sent by them the 2nd respondent has passed the impugned order dated 8.1.1998 whereby the period of suspension of the 4th respondent from 8.2.1988 to 7.3.1988 was directed to be treated as leave, to which he was eligible, since under Section 79 (3) (a) and (b) of the A.P Education Act,1982, no suspension could remain in force for more than two months from the date of the order of the competent authority. Since the suspension period of the 4th respondent, from 5.8.1989 to 28.2.1990, was for nearly five months, such prolonged suspension was irregular and the petitioner was directed to treat the period of suspension as it deemed fit and pay the consequential benefits to the teacher from its own funds. Since the recommendations of the Enquiry Officer, in view of the order passed by the Additional I Class Magistrate in C.C. No.251/1989, dated 9.10.1989, were found baseless, stoppage of one increment with cumulative effect was modified as “without cumulative effect”. It is this order which is sought to be questioned in this writ petition as not an order passed by the 2nd respondent in any appeal, barred by limitation, as being contrary to the order of this Court in Writ Petition No. 28683 of 1996, that necessary documents were not furnished to the petitioner and that the order was passed without notice to the petitioner.

Sri B.V. Rama Mohana Rao, learned counsel for the petitioner, would refer to the order of this Court in Writ Petition No. 28683 of 1996, dated 17.4.1997 wherein this

Court held that the order passed by the District Educational Officer, Eluru, dated 1.8.1995, upon a representation allegedly filed by the 4th respondent, was not an order in any appeal preferred by the 4th respondent against an order of punishment imposed by the petitioner, that under Rule 3, an appeal lay only to the Regional Joint Director, that the District Educational Officer was not competent to pass any order which would nullify the order of punishment imposed by the Petitioner-School. The direction given by the District Educational Officer to the petitioner to sanction Annual Increment, which was withheld by the School as a measure of punishment, was declared as not binding on the petitioner and the writ petition was dismissed.

Sri B.V. Rama Mohana Rao, learned counsel for the petitioner, would submit that in view of the order passed in writ Petition No.28683 of 1996, dated 17.4.1997, the 4th respondent ought to have preferred a proper appeal to the 2nd respondent herein and the earlier representation could not be construed as an appeal preferred by the 4th respondent. Learned counsel would submit that since the petitioner was neither put on notice nor did the 2nd respondent examine the issue of undue delay in preferring the appeal, the order of the 2nd respondent, was required to be set aside.

Sri K.S. Jagan Mohana Reddy, learned counsel for the 4th respondent, would refer to the Certificate dated 21.10.1999 wherein the Vice Chair Person of the Narsapur Municipal Council, West Godavari District had certified the conduct of the 4th respondent. Learned counsel would submit that the earlier Rules in G.O. Ms. No.467, dated 3.11.1983 have been superceded by the Rules notified in G.O. Ms. No.1 dated 1.1.1994. Learned counsel would refer to the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Management (Rules), as notified in G.O. Ms. No.1, dated 1.1.1994. Rule 19 therein, relates to disciplinary control and under Sub-rule (1) thereof, disciplinary powers are vested with the management in general. However the appellate authority, against the actions of the management, is the competent authority as defined in Rule 3, subject to the provisions of the Act. Under Section 79(3) of the Act, the competent authority for Elementary Schools and High Schools is the Regional Joint Director. The competent authority under Section 80 is also the Regional Joint Director.

Sri K.S. Jagan Mohan Reddy, learned counsel for the 4th respondent, would

submit that under the Rules notified in G.O. Ms. No.467, dated 3.11.1983, Rule 2(c) defines “Educational Officer”, for the purpose of appeal under Sub-Section (4) of Section 80, to mean in relation to all schools, the District Educational Officer of the District. Learned counsel would submit that while Section 80 of the Act relates to appeals against orders of punishment imposed against an employee of a private institution and under Sub-Section (1) thereof, any employee who is dismissed, removed or reduced in rank may prefer an appeal against the order to the competent authority within 30 days from the date of receipt of the order by him, since the punishment imposed on the 4th respondent is not one of removal, dismissal or reduction in rank, Section 80(1) was not applicable.

Learned counsel would refer to Sub-section (4) of Section 80 which provides that, in respect of an order imposing any penalty as laid down under Section 79(5), an appeal shall lie to the District Educational Officer having jurisdiction in respect of such appeals, the order appealed against shall not be set aside except on the grounds specified in Sub-section (2). Learned counsel would refer to Section 79 (5) which provides that before imposing any penalty, other than the penalties specified in Sub-section (1), an employee shall be informed in writing of the allegations on which action is proposed to be taken and be given an opportunity of making a representation. Learned counsel would submit that since the punishment imposed on the 4th respondent, of stoppage of one increment was not one among the punishments specified, either in Section 79(1) or Section 80(1) of the Act, an appeal lies against such an order only to the District Educational Officer under Section 80(4) read with Section 79(5) of the Act and that the 4th respondent had rightly preferred an appeal before the District Educational Officer. Learned counsel would submit that despite the clear statutory provisions in this regard, this Court, in its order in Writ Petition No.28683 of 1996, dated 17.4.1997, had erroneously held that the District Educational Officer was not the competent authority.

A perusal of the statutory provisions referred to by the learned counsel does seem to indicate that in cases where the punishment imposed, is other than that of dismissal, removal or reduction in rank, the competent authority is only the District Educational Officer. Since the punishment imposed on the 4th respondent is stoppage of one increment, the competent authority to hear the appeal is the District Educational

Officer. The fact however remains that the order of this Court in Writ Petition No.28683 of 1996, dated 17.4.1997, has attained finality and since it is a judgment inter parties, the order of this Court binds the 4th respondent. A perusal of the impugned order dated 8.1.1998 indicates that the said order was passed to implement the order of this Court in Writ Petition No.28683 of 1996, when in fact this Court had merely dismissed the writ petition and no orders were passed necessitating implementation of the orders of this Court. A report from the District Educational Officer, West Godavari District, seems to have been called for after which the impugned order was passed.

Since the petitioner had contended that the impugned order, dated 8.1.1998, was passed without putting them on notice and inasmuch as learned counsel for the 4th respondent would refer to the letter dated 22.12.1997 of the Correspondent of the petitioner-school, which is amongst the letters referred to in the impugned order dated 8.1.1998, the records were called for to verify as to whether any notice was issued to the petitioner in the appeal preferred by the 4th respondent.

Learned Government Pleader for School Education produced the record and would fairly submit that no notice was issued to the petitioner by the 2nd respondent. Needless to state that any order passed, in appeal, by the Regional Joint Director, under Section 80(4) read with Section 79(5) of the Act, could only have been after notice to the petitioner-management and after giving them an opportunity of submitting their representation thereto. It is not in dispute that the petitioner was not put on notice by the 2nd respondent before passing the impugned order and that the petitioner was denied the opportunity of submitting its representation. The impugned order is set aside. It is open to the 2nd respondent to consider the appeal, preferred by the 4th respondent, after issuing notice to the petitioner and after giving them an opportunity of being heard.

Sri B.V. Rama Mohana Rao, learned counsel for the petitioner would also take the plea of laches and contend that inasmuch as the punishment was imposed on the 4th respondent on 28.2.1990 and the limitation prescribed for preferring the appeal under Section 80(1) is of 30 days, the 2nd respondent could not entertain the belated appeal of the 4th respondent. As noticed earlier, Section 80(1), which prescribes a time limit of 30 days for preferring an appeal, applies only to orders of dismissal,

removal or reduction in rank. The punishment imposed on the 4th respondent, not being one such, the limitation of 30 days under Section 80(1) of the Act would have no application. This does not mean that the 2nd respondent could entertain an appeal which is unduly belated. Even if no time limit has been prescribed for preferring an appeal, it is well settled that appeals filed within a reasonable period can alone be entertained. What would be a reasonable period is a question of fact, which would be required to be considered on the facts and circumstances of each case. While considering the appeal preferred by the 4th respondent, after putting the petitioner on notice and after giving them an opportunity of being heard, the 2nd respondent shall also consider as to whether the appeal preferred by the 4th respondent, in the facts and circumstances of the case, is belated or not, and give reasons in support of his conclusions. It is only if the 2nd respondent is satisfied that the appeal preferred by the 4th respondent is not belated, would the question of his considering the appeal preferred by the 4th respondent on merits arise for consideration. The 2nd respondent shall take a decision afresh and pass appropriate orders in the appeal, in accordance with the aforesaid directions, within a period of four months from the date of receipt of a copy of this order. The impugned order dated 8.1.1998 is set aside. The writ petition is accordingly disposed of. There shall be no order as to costs.

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(Ramesh Ranganathan,J)

Date: 6th October, 2005

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